

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JEFF D. WIRTHS)	
Claimant)	
VS.)	
)	Docket No. 250,644
MARTIN K. EBY CONSTRUCTION COMPANY, INC.)	
Respondent)	
AND)	
)	
ST. PAUL FIRE & MARINE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the March 15, 2001, Award of Administrative Law Judge John D. Clark. Claimant was awarded an 8 percent impairment to the body as a whole after the Administrative Law Judge found claimant had proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent. The Board held oral argument on September 25, 2001.

APPEARANCES

Claimant appeared by his attorney, Randy S. Stalcup of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Gregory D. Worth of Lenexa, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

- (1) Did claimant suffer accidental injury through a series of accidents beginning December 1998 through November 30, 1999, while employed with respondent?
- (2) Did claimant's accidental injury arise out of and in the course of his employment with respondent?
- (3) What is the nature and extent of claimant's injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail, and it is not necessary to repeat those herein. The Appeals Board adopts those findings and conclusions as its own.

The Appeals Board finds it significant that both James L. Gluck, M.D., and Daniel D. Zimmerman, M.D., found that claimant's work activities, at the very least, aggravated claimant's condition. Accidents which serve only to aggravate or accelerate an existing condition or intensify an affliction are compensable. Kauffman v. Co-operative Refinery Ass'n of Coffeyville, 170 Kan. 325, 225 P.2d 129 (1950).

The Appeals Board finds claimant has proven by a preponderance of the credible evidence that his condition was permanently aggravated by his employment with respondent and the Award of the Administrative Law Judge, therefore, should be affirmed.

The Board finds it is appropriate based upon this record to grant equal weight to the testimony of the doctors. Therefore, considering the 10 percent whole body impairment of Daniel D. Zimmerman, M.D., with the 6 percent whole body impairment of James L. Gluck, M.D., the Appeals Board finds claimant has suffered an 8 percent impairment to the body as a whole as a result of the injuries suffered for respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated March 15, 2001, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Director